



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

IN THE MATTER OF

THE TRENTON
WATER WORKS
TRENTON CITY/MERCER COUNTY

ADMINISTRATIVE
CONSENT ORDER

BA ID# NEA090001-1111001

This Administrative Consent Order (ACO) is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (Department) by N.J.S.A. 13:1D-1 et seq., and the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and duly delegated to the Administrator of Water Compliance and Enforcement pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The City of Trenton (hereinafter "TWW") owns and operates Trenton Water Works, a public water system, as defined by N.J.A.C. 7:10-1.3, which has the Public Water System Identification No. 1111001 and located in the City of Trenton, New Jersey.
2. The New Jersey Safe Drinking Water Act regulations, specifically N.J.A.C. 7:10-5.1 adopt in total, with specific limited exceptions, the most current National Primary Drinking Water Regulations at 40 CFR 141. Subpart W of the National Primary Drinking Water Regulations, Enhanced Treatment for Cryptosporidium, 40 CFR 141.714, requires that systems must meet the conditions for each uncovered finished water storage facility or be in compliance with a State-approved schedule to meet these conditions no later than April 1, 2009.
3. On March 31, 2009, the Department issued and signed an Administrative Consent Order ("ACO"), NEA090001-1111001 with TWW to establish an enforceable schedule to construct a floating cover for TWW's uncovered finished water reservoir because they could not meet the requirements of 40 CFR 141.714 on or before April 1, 2009. The ACO established March 1, 2013 as the date to complete construction of the uncovered reservoir floating cover system.
4. As a result of the engineering review on the matter on October 1, 2010, TWW requested a modification and extension for the above mentioned ACO and therefore has been superseded by this document.

5. As a result of that request on November 26, 2013 the Department met with TWW that resulted in a negotiated, amended and modified timeline for the ACO.
6. Based on the facts set forth in these FINDINGS, the Department has determined that TWW will violate the Safe Drinking Water Act, N.J.S.A. 5B:12A-1 et seq., and the regulations promulgated pursuant thereto, specifically N.J.A.C. 7:10-5.1 et seq.
7. In order to resolve this matter without trial or adjudication, TWW has agreed to entry of this ACO and to be bound by its terms and conditions.
8. The Department acknowledges that compliance with the following milestones is conditioned in part on the completion of infrastructure improvements by New Jersey American required to establish emergency connections for TWW to have available during the construction work-related to compliance with 40 §C, F.R. 141.713 in the event of an emergency.

CATER

A. ENFORCEMENT COMPLIANCE SCHEDULE

9. TWW shall take whatever actions are necessary to achieve and maintain compliance with N.J.A.C. 7:10-5.1 and 40 CFR 141.714 including but not limited to the following:
 - A. On or before November 1, 2009, submit an application to Construct/Modify/Operate Public Works Facilities to the Department's Bureau of Water Systems and Well Permitting for the reservoir floating cover project as referenced in TWW's final report entitled "Pannington Road Reservoir Cover Project Report" that was submitted to the Department with a cover letter dated January 9, 2009. COMPLETED LATE
 - B. On or before July 1, 2010, begin construction on the temporary storage tanks, piping modifications and other project appurtenances that do not require the reservoir to be removed from service. COMPLETED LATE
 - C. On or before August 1, 2011, complete construction of the temporary storage tanks and begin testing and commissioning the tanks. COMPLETED
 - D. On or before March 1, 2012, place the temporary storage tanks into service. COMPLETED
 - E. On or before June 30, 2014, TWW shall complete the improvements to its Central Pumping Station.
 - F. On or before December 15, 2013, The New Jersey American Interconnection reinforcement project shall be completed, tested, and fully functional. COMPLETED

- G. On or before July 18, 2014, TWW shall complete the interconnection agreement negotiations with NJ American.
 - H. On or before June 23, 2017 TWW shall award the Reservoir cover construction contract.
 - I. On or before August 4, 2017, TWW will prepare a comprehensive community outreach and emergency action plan for Reservoir outages.
 - J. On or before January 14, 2018, TWW must complete the cleaning and repairs of the Reservoir interior.
 - K. On or before December 30, 2018, TWW must complete the installation of the Reservoir cover.
 - L. On or before July 30, 2019, TWW must have the Pennington reservoir must be cleaned, repaired, cover commissioned and tested and the entire project completed.
10. TWW shall include the following statement in their annual Consumer Confidence Reports (CCR), effective July 1, 2010, "Trenton Water Works has entered into an Administrative Consent Order (ACO) with the New Jersey Department of Environmental Protection to cover the finished water reservoir." Under the ACO the construction of the cover is scheduled to be completed by July 30, 2019. This statement shall remain in the TWW's CCRs until compliance with the requirements of 40 CFR 141.714 and N.J.A.C. 7:10-5.1 have been attained. TWW shall also ensure this notification is relayed to its bulk purchasers and emergency purchasers.
11. If TWW is not able to achieve compliance by taking the above actions, TWW is responsible for taking whatever additional actions are necessary in order to comply with all applicable federal, state and local permits as well as all applicable statutes, codes, rules, regulations and orders, including but not limited to the statutes and regulations cited herein. Furthermore, should TWW fail to comply with the requirements of the Enforcement Compliance Schedule included in this ACO, for reasons other than a valid Force Majeure defense, TWW will be considered to have incurred a Tier 2 treatment technique violation and TWW must then comply with the public notification requirements for a Tier 2 violation. Guidance on providing the proper public notice and use of the required language shall be provided to TWW by the Department.

B. PROGRESS REPORTS

12. TWW shall submit quarterly progress reports to the Department, at the address listed in paragraph twenty-five (25). The quarters shall be January to March, April to June, July to September, and October to December of each calendar year. Each progress report shall be submitted no later than the last day of the month following the end of the quarter being reported, except when such day falls on a holiday or a weekend, in which case the progress report shall be submitted on the next available business day. Each progress report shall explain the status of TWW's compliance with this ACO and shall include, but not be limited to, the following:

- A. Identification of site and reference to this ACO;
- B. status of permitting and planning approvals and any work at the site and progress to date;
- C. difficulties or problems encountered during reporting period and actions taken to rectify;
- D. activities planned for the next reporting period;
- E. required and actual completion date for each item required by this ACO;
- F. an explanation of any non-compliance with the compliance schedule; and
- G. evaluation of all corrective measures implemented to date.

C. STIPULATED PENALTIES

13. TWW shall pay stipulated penalties to the Department, as set forth below, upon the Department's written demand, for TWW's failure to comply with the Enforcement Compliance Schedule provisions of this ACO and/or the progress report submission deadlines of this ACO unless the Department has notified TWW in writing that a stipulated penalty will not be assessed for violations of the Enforcement Compliance Schedule pursuant to the force majeure provisions of this ACO.

- a. For all violations of the Enforcement Compliance Schedule set forth in paragraph seven (8) of this ACO:

<u>Calendar Days After Due Date</u>	<u>Stipulated Penalties</u>
1 st through 7 th calendar day of failure to comply with the schedule	\$100 per calendar day
8 th through 14 th day	\$200 per calendar day
15 th day and beyond	\$500 per calendar day

- b. For all violations of the progress report submission deadlines:

<u>Days Past Compliance Date</u>	<u>Stipulated Penalties</u>
Each calendar day that TWW fails to submit a report	\$50 per calendar day

14. Within sixty (60) calendar days after TWW's receipt of written demands from the Department for stipulated penalties, TWW shall submit payment by suitable financial instrument, made payable to "Treasurer, State of New Jersey" in the amount of the stipulated penalties demanded by the Department pursuant to paragraph eleven (11) above. Payment shall be mailed with the bottom portion of the Penalty Invoice Form supplied with the written demand. Payment shall be made to the following address:

New Jersey Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, New Jersey 08646-0417

15. If TWW fails to pay stipulated penalties pursuant to the preceding paragraphs, the Department may take action to collect same, including, but not limited to, instituting civil proceedings to collect such penalties pursuant to R. 4:67 and R. 4:70, or assess civil administrative penalties for violations of this ACO.
16. The payment of stipulated penalties does not alter TWW's responsibility to complete all requirements of this ACO.

D. FORCE MAJEURE

17. If any event occurs which TWW believes will or may cause delay in the achievement of the compliance schedule provisions of this ACO, TWW shall notify the Department in writing within 7 calendar days of becoming aware of the delay or anticipated delay, as appropriate. In the notification, TWW shall reference this paragraph; describe the anticipated length of the delay, the precise cause or causes of the delay, and any measures taken or to be taken to minimize the delay. TWW shall take all necessary action to prevent or minimize any such delay.
18. The Department may adjust the deadlines in the Enforcement Compliance Schedule of this ACO for a period no longer than the delay if the Department finds that:
- A. TWW has complied with the notice requirements of the preceding paragraph;

B. any delay or anticipated delay has been or will be caused by fire, flood, riot, strike, or other circumstances beyond the control of TWW; and

C. TWW has taken all necessary actions to prevent or minimize the delay.

19. If the Department denies TWW's force majeure request, TWW may be subject to stipulated penalties and other civil and/or administrative enforcement actions. The burden of proving that it complied with the preceding paragraphs shall rest with TWW. The burden of proving that any delay is caused by circumstances beyond the control of TWW and the length of any such delay attributable to those circumstances shall rest with TWW. Increases in the cost or expenses incurred by TWW in fulfilling the requirements of this ACO shall not be a basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements. Contractor's breach shall not automatically constitute force majeure. No force majeure adjustments will be granted for failure to timely submit progress reports.

E. GENERAL PROVISIONS

20. Nothing contained in this ACO restricts the ability of the Department to raise the above Findings in any other proceeding, specifically including, but not limited to, proceedings pursuant to N.J.S.A. 13:1B-126 et seq., (commonly referred to as A-901).

21. This ACO settles and resolves only the violation noted above, and is not a settlement of any other action rising from those violations. Nothing in this ACO shall resolve or preclude prosecution of criminal actions against TWW, if any.

22. This ACO shall be binding on TWW, its respective agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. Additionally, this ACO shall be binding on any TWW officials, employees, principals, directors, and officers to the extent that any such individual is a responsible corporate official within the meaning of N.J.S.A. 58:10A-31.

23. This ACO shall be fully enforceable as a final Administrative Order in the New Jersey Superior Court.

24. TWW agrees not to contest the terms or conditions of this ACO except that TWW may contest the Department's interpretation or application of such terms or conditions in any action brought by the Department to enforce this ACO's provisions.

25. This ACO shall not relieve TWW from obtaining and complying with all applicable federal, state and local permits as well as all applicable statutes, codes, rule, regulations and orders, including but not limited to the statutes and regulations cited herein.

26. The obligations and penalties of this ACO are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of public health, safety, welfare and the environment and are not intended to constitute debt(s) which may be limited or discharged in a bankruptcy proceeding.
27. Unless otherwise specifically provided herein, TWW shall submit all documents required by this ACO, except penalty payments, to the Department by certified mail, return receipt requested or by hand delivery with an acknowledgment of receipt form for the Department's signature to:

Raimund Belonzi, Chief
Water Compliance & Enforcement
Central Regional Office
PO Box 407
Trenton, NJ 08625-0407

and

Fred Sickels, Director
Division of Water Supply
P.O. Box 426
Trenton, N. J. 08625-0426

The date the Central Bureau of Water Compliance and Enforcement receives the certified mail or executes the acknowledgment will be the date the Department uses to determine TWW's compliance with this ACO.

28. Unless otherwise specifically provided herein, any communication made by the Department to TWW pursuant to this ACO shall be sent to:

Joseph McIntyre, Director of Water & Sewer
Trenton Water Works
Department of Public Works
Division of Water & Sewer
P.O. Box 528
Trenton, New Jersey 08604-0528

29. TWW shall not construe any unwritten or informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving TWW of its obligations under this ACO, the New Jersey Safe Drinking Water regulations, and/or the New Jersey Safe Drinking Water Act.
30. In addition to the Department's statutory and regulatory rights to enter and inspect, TWW shall allow the Department and its authorized representatives access to the site at all times for the purpose of determining compliance with this ACO.

31. Nothing in this ACO shall preclude the Department from taking enforcement action against TWW for matters not set forth in the findings of this ACO.
32. No obligations or penalties imposed by this ACO are intended to constitute debt(s) which may be limited or discharged in a bankruptcy proceeding. All obligations and penalties are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of public health, safety, welfare and the environment.
33. TWW shall give written notice of this ACO to any successor in interest thirty (30) calendar days prior to transfer of ownership or control of the facility or facilities which are the subject of this ACO and shall simultaneously notify the Department that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership or control of TWW's facility. In addition, the parties agree that any contract, lease, deed or any other agreement that TWW enters into to convey the property/facility that is the subject of this ACO shall include a provision which states that the successor, assignee, tenant or purchaser has agreed to assume the obligations imposed by this ACO.
34. The Department reserves all statutory and common law rights to require TWW to take additional action(s) if the Department determines that such actions are necessary to protect public health, safety, welfare and the environment. Nothing in this ACO shall constitute a waiver of any statutory or common law right of the Department to require such additional measures should the Department determine that such measures are necessary.
35. Performance of the terms of this ACO by TWW is not conditioned in any way on the receipt by TWW of any federal or state funds.
36. TWW shall perform all work required by this ACO in accordance with prevailing professional standards.
37. This ACO shall be governed and interpreted under the laws of the State of New Jersey.
38. If any provision of this ACO is found invalid or unenforceable, the remainder of this ACO shall not be affected thereby and each provision shall be valid and enforced to the fullest extent permitted by law. The Department does, however, retain the right to terminate the remainder of this ACO if, after such finding, it determines that the remaining ACO does not serve the purpose for which it was intended.
40. This ACO represents the entire integrated agreement between the Department, and TWW on the matters contained herein.

41. The Department reserves the right to unilaterally terminate this ACO in the event TWW violates its terms and to take any additional enforcement action it deems necessary.
42. This ACO shall terminate upon receipt by TWW of written notice from the Department that all the requirements of this ACO have been satisfied. Termination of this ACO shall not relieve TWW of any liabilities for unpaid penalties as previously demanded by the Department pursuant to the terms and conditions of this ACO, nor shall it affect in any way the Department's rights and abilities to collect said unpaid penalties.
43. This ACO shall become effective upon the execution hereof by all parties.

New Jersey Department of
Environmental Protection

DATE: 1/27/14

BY: [Signature]

Marcedius T. Jameson, Director
Water Compliance and Enforcement

Trenton Water Works

DATE: 1/23/14

BY: [Signature]

Sam Hutchinson,
Business Administrator for the
City of Trenton

By this signature, I certify that I have full authority to execute this document on behalf of the Trenton Water Works